

# Employment

## JSEC NEWS

**The  
More  
You  
Know**

### MILITARY LEAVE AND REEMPLOYMENT RIGHTS

The Uniformed Services Employment and Reemployment Rights Act (USERRA) was signed on October 13, 1994. The Act applies to persons who perform duty, voluntarily or involuntarily, in the "uniformed services," which include the Army, Navy, Marine Corps, Air Force, Coast Guard, and Public Health Service commissioned corps, as well as the reserve components of each of these services. Federal training or service in the Army National Guard and Air National Guard also gives rise to rights under USERRA. In addition, under the Public Health Security and Bioterrorism Response Act of 2002, certain disaster response work (and authorized training for such work) is considered "service in the uniformed services" as well.

Uniformed service includes active duty, active duty for training, inactive duty training (such as drills), initial active duty training, and funeral honors duty performed by National Guard and reserve members, as well as the period for which a person is absent from a position of employment for the purpose of an examination to determine fitness to perform any such duty.

USERRA covers nearly all employees, including part-time and probationary employees. USERRA applies to virtually all U.S. employers, regardless of size. USERRA permits an employee to accumulate a total absence of five years from his or her employer by reason of military service and still retain reemployment rights, with exceptions from this time limit for training and involuntary active duty extensions. Reemployment is required after "satisfactory completion" of a period of service, this does not include dishonorable or "other than Honorable" types of discharge. Employers can deny reinstatement to qualified service personnel only if they can show undue hardship, that conditions have changed so as to make reemployment impossible or unreasonable, or that the job the person left was temporary and would have ended. When two employees in succession enter military service from the same position, the right of reemployment belongs to the first person that left the position.

Returning service personnel are to be regarded as having been on a leave of absence or furlough during their period of military service. Upon return, they are eligible for "like seniority, status, and pay." This means that returning service personnel will count their period of military service as part of their total seniority within the company for such benefits as pension eligibility and long-service vacation. Similarly, across-the-board increases, improvement in insurance or other benefits, and all the other rights or benefits that would probably have been derived from continued employment, must be given to them on the same terms as if they had been working for the company during the military service.

## **Military Leave and Reemployment Rights (USERRA) - Cont'd**

The amount of time a returning employee has to reapply for work depends on how long he or she was away on duty.

- Individuals who serve more than 180 days must reapply for work within 90 days of completing service (in Montana this time period is 40 days); then cannot be discharged without cause for 12 months thereafter.
- Those who serve for 31-180 days must apply for reinstatement within 14 days of the end of service; they cannot be discharged without cause for 6 months.
- Individuals who serve for 30 days or less must report to their employer at the start of the next regularly scheduled shift following eight hours or returning directly home; there is no protected period of employment.

These time limits may be extended for up to 2 years if an individual is hospitalized or convalescing from an injury caused by active duty. Employers are not required to reemploy an individual whose employment prior to military service was for a brief, non-recurrent period, with no reasonable expectation that it would continue indefinitely.

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An employee who serves 90 days or less must be reemployed in a position that he or she would have attained if continuously employed. If not qualified for that position, the employee must be reemployed in the position he or she left.

No employer should deny a military request or terminate an employee without seeking advice of legal counsel. Employers who fail to comply with the law may be assessed back wages, legal fees and liquidated damages in the amount equal to back wages if a court determines that the violation was "willful".

A detailed discussion of employers' obligations under USERRA may be found at the National Committee for Employer Support of the Guard and Reserve web site [www.esgr.org](http://www.esgr.org) or on the US Department of Labor website, <http://www.dol.gov/dol.vets/>





## Veterans Employment Websites

[www.usps.com/employment/jobs.htm](http://www.usps.com/employment/jobs.htm)

[www.sealiftcommand.com](http://www.sealiftcommand.com)

[www.tsa.gov](http://www.tsa.gov)

[www.vacareers.com](http://www.vacareers.com)

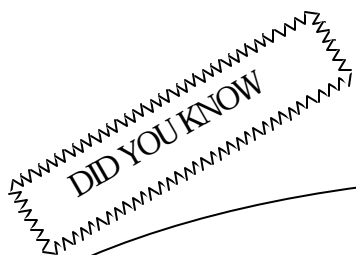
[www.dtic.mil/dps](http://www.dtic.mil/dps) (federal police officer)

[www.usajobs.opm.gov](http://www.usajobs.opm.gov)

### Don't forget about the Assistance for Business Clinic

Mark your calendar!

The Lake County Job Service Employer Committee will sponsor the 2003 Assistance for Business Clinic in Polson, **Tuesday, October 7** at KwaTaqNuk Resort.



### **SMOKING AND EMPLOYMENT**

An employer has a right to enforce a no-smoking rule on their premises but according to Montana Code Annotated 39-2-313, they cannot refuse to hire or to fire an employee because the employee engages in the use of a legalized substance, such as tobacco or alcohol on their own time. In your job posting, you cannot say the person has to be a non-smoker, just that it's a non-smoking environment.



STANDARD MAIL  
U.S. POSTAGE  
PAID  
POLSON MT  
59860  
PERMIT NO. 273

417B Main Street  
P.O. Box 970  
Polson, MT 59860  
(406) 883-7880

### **FREE 5-IN-1 MANDATORY POSTERS**

If you are unsure what posters you need to post in your business, the following federal posters are required:

- Equal Employment Opportunity
- Family Medical Leave Act (Employers with 50 or more employees in a 75-mile radius)
- Federal Minimum Wage (must be displayed on an employee bulletin board)
- Job Safety and Health (OSHA)
- Polygraph (does not apply to public employers)

In addition to the above-mentioned federal posters, employers are required to post proof of Unemployment Insurance coverage and Workers' Compensation coverage. You receive posting notices when you submit the paperwork for Unemployment Insurance and Workers' Compensation coverage.

If you would like a **free** copy of the new 5-in-1 mandatory poster, please contact June Littlefield, Business Advocate, Lake County Job Service Workforce Center, 883-7883.

### Other Newsletters

#### Volume 1

Child Labor Laws/Job Application Inquiries

#### Volume 2

Employment Retention/Tips on Providing & Checking References

#### Volume 3

Job Descriptions

#### Volume 4

Performance Appraisals

#### Volume 5

Navigating the Job Service Website

#### Volume 6

Lake County Job Service Resources

May download at:

[jsd.dli.state.mt.us/local/polson](http://jsd.dli.state.mt.us/local/polson)

Or call June Littlefield 883-7883

